

Missoula Textile Services and International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 19-RC-10375

May 12, 1982

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objection to an election¹ held on December 18, 1981, and the Acting Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exception and brief, and hereby adopts the Acting Regional Director's finding and recommendations, but only to the extent consistent herein.

At issue is a ballot which is blank on its face, but contained the word "No" written on its back. The Acting Regional Director, relying on then-current Board law,² recommended that the ballot be considered a void ballot. The Board has since enunciated a new position on such ballots in *Hydro Conduit*.³ The Board will henceforth, consistent with

its policy of considering voter intent expressed irregularly on the front of a ballot, also give effect to the intent of the voter if such intent is manifested on the back of the ballot. The voter here expressed his intent to vote against representation by the Union by writing "No" on the back of the ballot. Therefore we find that the Board agent properly counted the ballot as a vote against the Petitioner. Accordingly, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for International Association of Machinists and Aerospace Workers, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.⁴

MEMBER JENKINS, dissenting:

For the reasons expressed in my dissenting opinion in *Hydro Conduit Corporation*, 260 NLRB 1352, I would adopt the Acting Regional Director's disposition of the issue presented here.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 11 for, and 11 against, the Petitioner; there were no challenged ballots. The tally included the ballot at issue as a vote against the Petitioner.

² *Staco, Inc.*, 234 NLRB 593 (1978); *Manhattan Corporation, Manhattan Guest House, Inc.*, 240 NLRB 272 (1979).

³ *Hydro Conduit Corporation*, 260 NLRB 1352 (1982).

⁴ Member Fanning believes that a rule such as he proposed in *Hydro Conduit Corporation*, 260 NLRB 1352, would be the most efficient and cost effective way to handle cases of this kind. But, with due regard to the Board's panel system of deciding most cases, since his colleagues have rejected this approach, he would find that the disputed vote in this case was a vote against the Union and he would certify that a majority of the valid ballots have not been cast for the Petitioner.